

Universal Transfer Company and General Teamsters Union, Local 406, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 7-CA-20967

March 7, 1983

DECISION AND ORDER

BY CHAIRMAN MILLER AND MEMBERS
JENKINS AND HUNTER

Upon a charge filed on July 23, 1982, by General Teamsters Union, Local 406, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (herein called the Union), and duly served on Universal Transfer Company (herein called Respondent), the General Counsel of the National Labor Relations Board, by the Regional Director for Region 7, issued a complaint on September 29, 1982, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges, *inter alia*, that by virtue of a collective-bargaining agreement between the Union and Respondent, being by its terms effective from April 1, 1979, through March 31, 1982, the Union has been and now is the exclusive bargaining representative of all employees in the following appropriate unit:

All truck drivers employed by Respondent, but excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

The complaint further alleges that the collective-bargaining agreement provides for the payment of money to employees to compensate them for unused sick leave and for unused accrued vacation pay. The complaint also alleges that Respondent has failed and refused, since on or about February 26, 1982, and continuing to date, to pay to employees money due to them for unused sick leave and unused accrued vacation pay, and that by this conduct Respondent has failed and refused, and continues to fail and refuse, to bargain collectively and in good faith with the Union as the representative of the employees in the above-described unit in violation of Section 8(a)(5) and (1) of the Act. Subsequently, Respondent timely filed an answer to the complaint, admitting in part and denying in part the allegations of the complaint. On November 10,

1982, Respondent filed an amended answer admitting all allegations of the complaint, and asserting that Respondent has no assets and is not in business at the present time.

Thereafter, on November 22, 1982, the General Counsel filed with the Board in Washington, D.C., a motion to transfer case to the Board and motion for judgment on the pleadings, with exhibits attached. On November 30, 1982, the Board issued an order transferring the proceeding to itself in Washington, D.C., and a Notice To Show Cause why the General Counsel's motion for judgment on the pleadings should not be granted. Respondent has not filed a response to the Notice To Show Cause.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Judgment on the Pleadings

In its amended answer to the complaint Respondent admits all allegations contained in the complaint but states that it has no assets and is not in business at the present time. It is well settled that an employer acts in derogation of its bargaining obligation under Section 8(d) of the Act, and thereby violates Section 8(a)(5) and (1) of the Act when, during the life of a collective-bargaining agreement between it and a union, it unilaterally modifies or otherwise repudiates terms and conditions of employment contained in the agreement.¹ It is also well established that economic necessity is not cognizable as a defense to the unilateral repudiation of monetary provisions in the collective-bargaining agreement.²

Based on the foregoing, we therefore find that all of the allegations in the complaint are true and accurate and grant judgment on the pleadings as to all the allegations in the complaint against Respondent.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent, a Michigan corporation with an office and place of business in Grand Rapids,

¹ *FWD Corporation*, 257 NLRB 1300 (1981); *Morelli Construction Company*, 240 NLRB 1190 (1979).

² *FWD Corporation*, *supra*; *Nassau County Health Facilities Association, Inc., et al.*, 227 NLRB 1680 (1977).

Michigan, is, and has been at all times material herein, engaged in the interstate transportation and delivery of goods. During the calendar year ending December 31, 1981, Respondent, in the course and conduct of its business operations within the State of Michigan, derived gross revenues in excess of \$50,000, for the transportation of freight and commodities in interstate commerce pursuant to arrangements with, and as agent for, various common carriers, including Universal Pioneer Freight Systems, Inc., each of which operates between and among various States of the United States. Thus, Respondent functions as an essential link in the transportation of freight and commodities in interstate commerce.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

General Teamsters Union, Local 406, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The Representative Status of the Union*

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All truck drivers employed by Respondent, but excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

Since April 1, 1979, and at all times material herein, the Union, by virtue of Section 9(a) of the Act, has been, and is, the exclusive collective-bargaining representative of the employees in this unit. The Union and Respondent are parties to a collective-bargaining agreement, effective by its terms for the period from April 1, 1979, through March 31, 1982.

B. *The Unfair Labor Practices*

Since on or about February 26, 1982, and continuing to date, Respondent has failed and refused to pay to employees money due to them for unused sick leave and unused accrued vacation pay, as provided in the collective-bargaining agreement,

without notice to or bargaining with the Union, in violation of Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and that it take certain affirmative action designed to effectuate the purposes and policies of the Act. We shall order Respondent to make whole the employees in the appropriate unit by paying to them all money due to them for unused sick leave and unused accrued vacation pay under the terms of the applicable collective-bargaining agreement, which they would have received absent Respondent's unlawful conduct. All payments to employees shall be made with interest thereon computed in accordance with the formula set forth in *Florida Steel Corporation*, 231 NLRB 651 (1977). (See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).)

CONCLUSIONS OF LAW

1. Universal Transfer Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. General Teamsters Union, Local 406, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

3. All truck drivers employed by Respondent, but excluding office clerical employees, professional employees, guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. At all times material herein, the Union has been the exclusive representative of all the employees in the appropriate unit described above for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

5. By failing and refusing, since on or about February 26, 1982, and continuing to date, to pay to

employees money due to them for unused sick leave and unused accrued vacation pay, as provided in the applicable collective-bargaining agreement, Respondent has refused to bargain collectively in good faith, and is refusing to bargain collectively in good faith, with the Union as the exclusive representative of Respondent's employees in the above-described appropriate unit, and thereby has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Universal Transfer Company, Grand Rapids, Michigan, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Unilaterally, and without notice to or bargaining with the Union as the exclusive representative of the employees in the unit described below, failing and refusing to pay to employees money due to them for unused sick leave and unused accrued vacation pay, as provided in the applicable collective-bargaining agreement. The appropriate unit is:

All truck drivers employed by Respondent, but excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with the Union as the exclusive bargaining representative of the employees in the unit described in paragraph 1(a) above regarding payment of unused sick leave and unused accrued vacation pay as provided for in the applicable collective-bargaining agreement.

(b) Make whole the employees in the unit described in paragraph 1(a) above in the manner set forth in the section of this Decision entitled "The Remedy" for its unlawful failure to pay its employees money due to them for unused sick leave and unused accrued vacation pay as required by the applicable collective-bargaining agreement.

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its Grand Rapids, Michigan, facility copies of the attached notice marked "Appendix."³ Copies of said notice, on forms provided by the Regional Director for Region 7, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 7, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

³ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

WE WILL NOT unilaterally, and without notice to or bargaining with General Teamsters Union, Local 406, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive representative of the employees in the unit described below, fail and refuse to pay to employees money due to them for unused sick leave and unused accrued vacation pay as provided for in the applicable collective-bargaining agreement. The appropriate unit is:

All truck drivers employed by us, but excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of rights guaranteed them in Section 7 of the Act.

WE WILL, upon request, bargain collectively with the Union as the exclusive bargaining representative of the employees in the unit described above regarding payment of unused sick leave and unused accrued vacation pay as provided for in the applicable collective-bargaining agreement.

WE WILL make whole, with interest, the employees in the above-described unit for our unlawful failure to pay our employees money due to them for unused sick leave and unused accrued vacation pay as required by the applicable collective-bargaining agreement.

UNIVERSAL TRANSFER COMPANY